

REMARKS

Applicant amends independent Claims 1, 12, and 24 and dependent Claim 4 to clarify claimed subject matter and/or correct informalities. The original specification and drawings support these claim amendments at least at pages 3, 4 and in Figures 1, 2, and 5. Therefore, these revisions introduce no new matter.

Claims 1-30 are for consideration upon entry of the present Amendment. Applicant respectfully requests reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks.

Claim Rejections under 35 U.S.C. §102: A. and B.

A. Claims 1 and 2 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 4,334,955 to Zoeke et al. (hereinafter “Zoeke”).

B. Claims 1 and 3 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 5,307,250 to Pearson (hereinafter “Pearson”). Applicant respectfully traverses this rejection. Anticipation under §102 requires that each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference (MPEP §2131).

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends **independent**

Claim 1, to clarify further features of the subject matter. Amended Claim 1 now recites:

A weight sensing shelf device, comprising:
a **movable weight sensing tray** configured to support items;
a resilient member operatively engaged with the **movable weight sensing tray** and configured to flex according to the weight of items stored on the **movable weight sensing tray**; and
a switch configured to generate a signal when the amount of items on the **movable weight sensing tray** is less than a predefined amount, **the signal is sent to a central processing unit that automatically reorders items based on the signal received from the switch.**

Applicant respectfully submits that neither Zoeke nor Pearson discloses such a method.

Reference Fails to Disclose Movable Weight Sensing Tray, Signal to CPU, Reorder Items

Zoeke is directed towards a device for controlling evaporation of a liquid (col. 1, lines 6-7), which is not “*a weight sensing shelf device*”, as recited in Applicant’s Claim 1. The container in Zoeke is disposed on a base plate supported by a leaf spring, which will bend in an amount directly proportional to the amount of liquid in the container at any given time (col. 2, lines 14-20), not “*when the amount of items on the moveable weight sensing tray is less than a predefined amount*”, as recited in Applicant’s Claim 1. Hence, the container 10, the leaf spring 18, and the microswitch 22 in Zoeke are not the same features nor perform the same functions as Applicant’s claimed movable weight sensing tray, resilient

member, and switch to generate a signal when the amount of items on the movable weight sensing tray is less than a predefined amount. Also, there is no mention or discussion in Zoeke of a signal or a CPU as recited in Applicant's Claim 1. Thus, Zoeke fails to disclose the recited features of Claim 1.

Pearson is directed towards a light-up coaster for beer bottles and includes a spring which biases the inner housing (Abstract), not "*a movable weight sensing tray*" as recited in Applicant's Claim 1. Pearson describes switches that are arranged in series with a light bulb and a battery power-source (Abstract), which is not "*generating a signal... the signal is sent to a CPU*" as recited in Applicant's Claim 1. Hence, the light-up coaster 10, the coil spring 22, and the switches in Pearson are not the same features nor perform the same functions as Applicant's claimed movable weight sensing tray, resilient member engaged with the movable weight sensing tray, and a switch to generate a signal when the amount of items on the movable weight sensing tray is less than a predefined amount. Thus, Pearson also fails to disclose the recited features of Claim 1.

Applicant submits that Zoeke and Pearson fail to disclose "*a movable weight sensing tray configured to support items; a switch configured to generate a signal when the amount of items on the movable weight sensing tray is less than a predefined amount, the signal is sent to a central processing unit that automatically reorders items based on the signal received from the switch*", as recited in Applicant's amended Claim 1. As each and every feature is not disclosed by Zoeke and/or Pearson, Applicant respectfully submits that Claim 1 is

not anticipated by Zoeke and Pearson and requests that the §102 rejection be withdrawn.

Dependent Claims 2-3 depend directly from independent Claim 1, and thus are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features that, in combination with those recited in Claim 1, are not disclosed by Zoeke and Pearson.

Thus, Applicant respectfully submits that as each and every feature is not disclosed, the claims are not anticipated by Zoeke and Pearson. Applicant respectfully requests that the §102 rejection be withdrawn.

Claim Rejections under 35 U.S.C. § 103

Claims 1-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,108,363 to Susumu (hereinafter “Susumu”) in view of Zoeke and further in view of U.S. Patent No. 4,582,151 to Mairot et al. (hereinafter “Mairot”). Applicant respectfully traverses the rejection.

As shown above, Applicant amends Claim 1 to clarify further features of the subject matter. Applicant submits that no such method is disclosed, taught, or suggested by Susumu, Zoeke, and Mairot, alone or in combination.

First, Applicant asserts the Office no longer establishes a *prima facie* case of obviousness. Applicant submits that Susumu is directed towards an automatic vending machine which adopts a display-stand system havinga weighing scale for counting a quantity of commodities purchased and an electronic computer, into

which a sales-information of commodities, thereby rationalizing the sales system of commodities (col. 2, lines 30-35). The weighing scale in Susumu is for counting a quantity of commodities purchased, which is not “*a movable weight sensing tray*”, as recited in Applicant’s Claim 1. In addition, the electronic computer in Susumu is for sales-information of commodities, which is not “*generating a signal when the amount of items on the movable weight sensing tray is less than a predefined amount and automatically reordering items based on the signal*”, as recited in Applicant’s Claim 1. Thus, Susumu fails to disclose, teach, or suggest the features recited in Applicant’s Claim 1.

Second, as explained above with respect to the rejection under §102(b), Zoeke fails to compensate for the deficiencies of Susumu, as Zoeke does not disclose, teach or suggest the recited features of Applicant’s Claim 1. While there is mention of a container 10, a leaf spring 18, and a microswitch 22 in Zoeke, these perform different functions than Applicant’s claimed subject matter. Furthermore, Zoeke fails to mention or discuss “*a movable weight sensing tray, a signal sent to a CPU, and the CPU automatically reorders items based on the signal received*” as recited in Applicant’s Claim 1. Thus, Zoeke does not provide what is missing from Susumu to support a §103 rejection.

Third, Applicant submits that Mairot fails to remedy the deficiencies in the Susumu and Zoeke references. Mairot is directed towards a weighing apparatus such as a kitchen or a laboratory balance, included into an insertable element (col. 1, lines 4-5, line 39). The weighing apparatus consists of an electronic balance

with a digital readout (col. 2, lines 16-17). Nowhere in Mairot is there any discussion or mention of a resilient member engaged with the movable weight sensing tray and a CPU. Thus, Mairot fails to disclose, teach, or suggest the recited features of Applicant's Claim 1.

Applicant submits that Susumu, Zoeke, and/or Mairot, alone or in combination fail to disclose, teach, or suggest the recited features of Claim 1. Applicant submits that the evidence no longer supports the rejection made under §103(a) and requests the rejection of the claim should be withdrawn.

Proposed Modification Would Render the References Inoperable

The MPEP states, "if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification" (MPEP §2143.01 V.) For example, using the slidable shelf of Mairot with the weighing apparatus of Susumu or Zoeke would render Mairot unsatisfactory. In particular, the modification of Susumu or Zoeke with the slidable shelf of Mairot would render Mairot unsatisfactory for its intended purpose, a weighing apparatus to be insertable beneath a kitchen or a laboratory bench (Mairot, col. 1, lines 20-25).

Applicant submits that the vending machine measuring the weights of Susumu would be inoperable in the insertable bench of Mairot. Furthermore, the container for controlling evaporation and the leaf spring of Zoeke would be

inoperable and too large to fit in the inserted bench of Mairot. Thus, there can be no motivation to combine the references as proposed.

Applicant respectfully requests the §103(a) rejection of these claims should be withdrawn.

Insufficient Evidence to Suggest Reason to Modify References

Last, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness... KSR Int'l Corp. v. Teleflex, Inc., Slip Op. at 14 (U.S. Apr. 30, 20076) (quoting In re Kahn, 441 F.3d 977, 988 (CA Fed. 2006)). The Office stated the motivation for modifying the complex load cell based system of Susumu with just a spring supported shelf and limit switch, as the design of Zoeke is to produce a cheaper and simpler to install design (Office Action, page 3). Applicant respectfully disagrees and submits that this modification is not well reasoned, because there is nothing in either of the references that would suggest this reason.

Furthermore, there is no articulated reason with some rational underpinning to support this rejection. Instead, the asserted reason relies on hindsight without evidence of articulated reasoning to propose the suggested modification. This rejection is improper for this additional reason.

Independent Claims 12 and 24 are directed to a system and a method, respectively, and each is allowable for reasons similar to those discussed above

with respect to Claim 1. For example, Susumu, Zoeke, and Mairot fail to disclose, teach, or suggest *“A system for automatically reordering items, the system comprising: a movable weight sensing tray configured to support items; a resilient member coupled to the movable weight sensing tray and configured to flex according to the weight of items stored on the movable weight sensing tray; a switch configured to generate a signal when the amount of items on the movable weight sensing tray is less than a predefined amount; and a central processing unit coupled to the switch, the central processing unit including: a first component configured to receive signals generated by the switch; and a second component configured to automatically reorder items based on the received signal from the switch”*, as recited in Applicant’s amended **Claim 12**.

Furthermore, Susumu, Zoeke, and Mairot fail to disclose, teach, or suggest *“A method for automatically reordering items, the method comprising: supporting items in a horizontally slidable weight sensing tray with a resilient member; generating a signal by a switch when the amount of items on the weight sensing tray is less than a predefined amount; receiving the generated signals at a central processing unit; and automatically reordering items based on the received signal from the switch [/.] , wherein the signal is sent to a central processing unit”*, as recited in Applicant’s amended **Claim 24**.

Dependent Claims 2-11, 13-23, and 25-30 depend directly or indirectly from one of independent Claims 1, 12, and 24, respectively, and thus are allowable as depending from an allowable base claim. These claims are also allowable for

their own recited features that, in combination with those recited in Claim 1, are not disclosed, taught, or suggested by Susumu, Zoeke, and Mairot, alone or in combination. Accordingly, Applicant submits that the evidence relied upon by the Office no longer supports the rejections made under §103(a).

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends **dependent Claim 4**, to clarify further features of the subject matter. Amended Claim 4 now recites: *“the device of Claim 1, wherein the signal generated by the switch is sent to a central processing unit (CPU), the CPU automatically reorders items by sending a request to a supplier through at least one of a network, a facsimile, or a postal transmission”*. Applicant submits that Susumu, Zoeke, and Mairot, alone or in combination, fail to disclose, teach, or suggest the recited features of amended Claim 4.

Applicant respectfully submits that the cited references do not render the claimed subject matter obvious and that the claimed subject matter, therefore, patentably distinguishes over the cited references. For all of these reasons, Applicant respectfully requests the §103 rejection of these claims should be withdrawn.

Conclusion

Claims 1-30 are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of the subject application. If any issue remains unresolved that would prevent allowance of this case, the Office is requested to contact the undersigned attorney to resolve the issue.

Respectfully Submitted,

Lee & Hayes, PLLC
421 W. Riverside Avenue, Suite 500
Spokane, WA 99201

Dated: August 14, 2008

By: Shirley Lee Anderson/
Shirley Lee Anderson
Reg. No. 57,763
509.324.9256 ext. 258